THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. Nos. 17768, 17769, 17772, 17774, 17778 and 17781 of 2001

Common order:

Save respondent No.1, the petitioner and respondent Nos. 2 and 3 are one and the same in this batch of six writ petitions, which assail the orders passed by respondent No.3, namely, the Assistant Commissioner of Labour, Eluru, confirming the orders of respondent No.2, namely, the Labour Officer, Bhimavaram. As common questions of law and fact are involved in all this batch of six writ petitions, they are heard together and are being disposed of by this common judgment.

Respondent No.1 (hereinafter referred to as 'the employees') stating that they worked in the capacity of Supervisor, Machine Operator, Plant Operator, Clerk, Marketing Manager and Clerk respectively with the petitioner, on monthly salary of Rs.3,000/-, Rs. 2,500/-, Rs.6,500/-, Rs. 1,500/-, Rs.3,000/- and Rs.1,200/- during different periods, filed applications under Section 51 of the A.P. Shops and Establishments Act, 1988 (hereinafter referred to as 'the Act') before respondent No.2, namely the Labour Officer, Bhimavaram, seeking direction to the petitioner to pay terminal benefits on the ground that their services were terminated without any notice. The said applications on contest by the petitioner were allowed by respondent No.2. Assailing the said orders of respondent No.2, the petitioner filed appeals under Section 53 of the Act, before respondent No.3, who by reason of the orders impugned in this batch of writ petitions, dismissed the same confirming the orders of respondent No.2.

Except respondent No.1-employee in W.P. No. 17769 of 2001, no other employee in other writ petitions filed counter.

The learned counsel for the petitioner submits that the petitioner being an “industrial establishment”, is not covered by the definition of “commercial establishment” as defined in Section 2(5) of the provisions of A.P. Shops and Establishments Act, 1988, and as such, the proceedings initiated by respondent No.1 thereunder, are invalid. To prove that the petitioner is an “industrial establishment”, he produced copies of the Permanent Registration Certificate and Eligibility Certificate for Claiming 25% Rebate on Demand and Energy Charges for LT and HT specified new industries, issued by the District Industries Centre.

He submits that respondent No.2 losing sight of the fact the petitioner is an industrial establishment and the provisions of the Act are not applicable, has allowed the applications filed by respondent No.1, which were erroneously confirmed in appeal by respondent No.3.

He submits that even assuming that the petitioner is a commercial establishment and it is covered by the provisions of the Act, except the employees in W.P. Nos. 17774 and 17781 of 2001, whose average monthly wages do not exceed sixteen hundred rupees, all the other employees in the other four writ petitions, whose average monthly wages exceed sixteen hundred rupees, and who are claiming to have worked in a position of management and having control over the affairs of the establishment, are exempted from the applicability of the provisions of the Act, having regard to the exemptions specified in Section 73(1)(a) of the Act, which exempt employees in any establishment in a position of management and having control over the affairs of the establishment, whose monthly wages exceed sixteen

hundred rupees.

Heard the learned counsel for the petitioner and the learned counsel for respondent No.1 in W.P. No. 17769 of 2001.

Though the learned counsel for the petitioner contends that the petitioner being an “industrial establishment”, is not covered by the definition of “commercial establishment” as defined in Section 2(5) of the A.P. Shops and Establishments Act, 1988, the fact remains, the petitioner has subjected itself to the jurisdiction of the primary authority and appellate authority under the Act. They having subjected themselves to the provisions of the Act, and they have not taken any plea that the petitioner is not covered by the provisions of the Act, now cannot be allowed to contend that the petitioner being an “industrial establishment”, is not covered by the definition of “commercial establishment” as defined in Section 2(5) of the Act, and as such, the proceedings initiated by respondent No.1 are invalid.

It is contention of the petitioner that since the employees are holding positions of management and having control over the affairs of the management, under Section 73(1)(a) of the Act, they are exempted from the applicability of the provisions of the Act. To consider this contention, it is necessary to determine whether the employees are employed in the capacity of Manager having control over the affairs of the establishment, as was felt by the Division Bench of this Court in **S.S. Zaffar v. Labour Court**[1]. The Division Bench of this Court, which was confronted with a similar question, as is raised in this writ petition, upon considering the said question in the light of the provisions of the Act, held thus:

> In order to determine whether a person is in a position of management having control over the affairs of the establishment, the totality of the circumstances under which a person is discharging his duties have to be taken into consideration. It is true that merely because a person is designated with an office of high sounding nomenclature, he cannot be deemed to be in a position of management, but the

essential fact of the matter is that the question as to whether a position is in a position of management has to be decided by looking into the nature of duties and functions that he has to discharge in a particular establishment.

In the instant case, except the employee in W.P. No. 17778 of 2001, who is designated as Marketing Manager, the designation of all other employees, indicate that they are not holding positions of management and having control over the affairs of the establishment.

In **Prem Sagar v. S.V. Oil**[2], the apex Court held that the control or management which is associated with persons falling under the definition of employer is the general management or control of the said establishment, it is a kind of overall management or control and not management or control of sections or departments or sub-sections or sub-divisions that function under the management.

Be that as it may, a reading of the orders of the primary authority as well as the appellate authority, would disclose that the employees claimed that while they were working with the respondents, the petitioner terminated their services without notice, and though the petitioner contested the matter, the fact remains, the petitioner except denying that they do not know the employees, has not adduce any evidence to substantiate to disprove the claim of the employees that they worked with the petitioner. If the employees, really did not work with them, nothing prevented the petitioner from examining some of his employees as witnesses. The petitioner leave alone examining his witnesses, has not cross-examined the employees on the aspect that as they were working in the managerial level, the provisions of the A.P. Shops and Establishments Act, 1988, was not applicable to them. While the employees on the other hand, in support of their case, examined the co-employees to show that they, in fact, were employees of the petitioner. In such circumstances, the primary authority came to

the conclusion that the employees, were in fact, employees of the petitioner, and allowed their claim to the extent indicated therein, which was confirmed even by the appellate authority. The petitioner has taken the plea that the provisions of the A.P. Shops and Establishment Act, 1988 are not applicable to the employees, for the first time before this Court. The petitioner, both before the primary authority as well as the appellate authority, failed to avail the opportunity provided to disprove the claim of the employees. The petitioner having failed to avail the opportunities, now cannot be allowed to contend that as the employees are holding positions of management and were in control of the affairs of the establishment, they are exempted from the provisions of the Act. In that view of the matter, the contention of the petitioner that the employees filed the cases only at the instance of rival trade unions, cannot be accepted, and more so when no evidence was let in by the petitioner in that regard.

Given the capacity in which the employees claimed to have worked with the petitioner, namely Supervisor, Machine Operator, Plant Operator, Clerk, Marketing Manager and Clerk, before they were terminated from service without notice, indicate that except the post of Marketing Manager, all other positions are not at all positions of management, having over all control of the establishment, and even the post of Marketing Manager, by any stretch of imagination, can be said to be a position of management, having control over the affairs of the entire establishment.

In that view of the matter, I find no reason whatsoever or any error apparent on the face of the record, to interfere with the order passed by the appellate authority, confirming the order of the primary authority, allowing the claim applications of the employees, by granting

reliefs to the extent indicated therein.

The writ petitions are devoid of merit, and they are accordingly dismissed.

N.V. RAMANA, J.

Date: 15th March, 2007.
KSR

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[1] 1990 (3) ALT 617 (DB)

[2] AIR 1965 SC 111